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IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW JERSEY

**RECEIVED**

MAY 07 2003

AT 8:30 \_\_\_\_\_ M  
WILLIAM T. WALSH  
CLERK

\_\_\_\_\_  
ASCO POWER TECHNOLOGIES, L.P. )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
PEPCO TECHNOLOGIES, L.L.C., )  
BRADLEY JOHNSON, )  
MARK BAIRD, ET AL., )  
 )  
Defendants. )  
\_\_\_\_\_

03 CV 1942 (WHW)

**FILED**

MAY 7 2003

**ANSWER OF DEFENDANTS**  
**PEPCO TECHNOLOGIES, L.L.C.,**  
**BRADLEY JOHNSON AND MARK BAIRD**

AT 8:30 \_\_\_\_\_ M  
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Defendants PEPCO Technologies, L.L.C. ("PEPCO"), Bradley Johnson ("Johnson"), and Mark Baird ("Baird"), collectively ("Defendants"), by and through counsel, respond to the Complaint filed by Plaintiff ASCO Power Technologies, L.P. ("ASCO") as follows:

**FIRST DEFENSE**

Plaintiff's Complaint is barred in whole or in part for lack of personal jurisdiction in that, Defendants PEPCO, Johnson and Baird are nonresidents of the State of New Jersey, and do not have sufficient minimum contacts with New Jersey to give this District Court jurisdiction over the Defendants.

**SECOND DEFENSE**

Plaintiff's Complaint is barred in whole or in part in that Defendants Johnson and Baird were not properly served with process; thus the Complaint fails due to insufficiency of process and insufficiency of service of process upon Johnson and Baird.

**THIRD DEFENSE**

Plaintiff's Complaint is barred in whole or in part because Defendant Baird was improperly joined in this suit.

**FOURTH DEFENSE**

Plaintiff's Complaint is barred in whole or in part in that this District Court is an inconvenient and improper venue for the Defendants and witnesses.

**FIFTH DEFENSE**

Plaintiff's Complaint is barred in whole or in part because it fails to state a claim upon which relief can be granted.

**SIXTH DEFENSE**

Plaintiff's Complaint is barred in whole or in part under the doctrine of equitable estoppel.

**SEVENTH DEFENSE**

Plaintiff's Complaint, and each purported cause of action contained therein, is barred, in whole or in part, by the doctrine of assumption of risk.

**SEVENTH DEFENSE**

Plaintiff's Complaint, and each purported cause of action contained therein, is barred, in whole or in part, by Plaintiff's comparative or contributory negligence.

**EIGHTH DEFENSE**

Plaintiff's Complaint, and each purported cause of action contained therein, is barred, in whole or in part, because Plaintiff's damages, if any, were caused by the conduct or negligence of others over whom Defendants had no control.

**NINTH DEFENSE**

Plaintiff's Complaint, and each purported cause of action contained therein, is barred, in whole or in part, by the doctrine of accord and satisfaction.

**TENTH DEFENSE**

Plaintiff's Complaint, and each purported cause of action contained therein, is barred, in whole or in part, because the Plaintiff failed to exercise reasonable diligence in mitigating the damages allegedly sustained.

**ELEVENTH DEFENSE**

Plaintiff's Complaint, and each purported cause of action contained therein, is barred, in whole or in part, by the doctrine of laches.

**TWELFTH DEFENSE**

Plaintiff's Complaint, and each purported cause of action contained therein, is barred, in whole or in part, by the relevant statute of limitations.

Defendants admit, deny and/or otherwise answer the separately numbered paragraphs of the Complaint as follows:

**FIRST COUNT**

1. Defendants lack sufficient information to either admit or deny the allegations in Paragraph 1 of the Complaint.
2. Defendants deny the allegations contained in Paragraph 2 of the Complaint.
3. Defendants deny the allegations, as drafted, contained in Paragraph 3 of the Complaint.
4. Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 4 and therefore deny the same.
5. Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 5 and therefore deny the same.
6. Defendants deny the allegations contained in Paragraph 6.
7. Defendants deny the allegations contained in Paragraph 7; the allegations contained in Paragraph 7 reference an agreement which, to the extent one exists, speaks for itself.
8. Defendants deny the allegations, as drafted, contained in Paragraph 8.
9. Defendants deny the allegations contained in Paragraph 9.
10. Defendants deny the allegations contained in Paragraph 10; allegations reference a purchase order, which to the extent it exists, speaks for itself.
11. Defendants deny the allegations contained in Paragraph 11; allegations reference a purchase order, which, to the extent it exists, speaks for itself.
12. Defendants deny the allegations contained in Paragraph 12.
13. Defendants deny the allegations contained in Paragraph 13.
14. Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 14 and therefore deny the same.
15. Defendants deny the allegations contained in Paragraph 15.

16. Defendants deny the allegations contained in Paragraph 16.

17. The allegations contained in Paragraph 17 of the Complaint are legal conclusions, for which no answer is due. As to all other allegations contained in Paragraph 17, those allegations are denied. Defendants deny that Plaintiff is entitled to any relief requested in the WHEREFORE clause of the First Count of Plaintiff's Complaint.

### **SECOND COUNT**

1. Defendants hereby incorporate by reference their response to the allegations set forth in the First Count of this Complaint as if the same was set forth at length herein.

2. Defendants deny the allegations contained in Paragraph 2, Second Count of the Complaint.

3. Defendants deny the allegations contained in Paragraph 3, Second Count of the Complaint.

4. The allegations contained in Paragraph 4, Second Count of the Complaint are legal conclusions, for which no answer is due. As to all other allegations contained in Paragraph 4, Second Count of the Complaint, those allegations are denied. Defendants deny that Plaintiff is entitled to any relief requested in the WHEREFORE clause of the Second Count of Plaintiff's complaint.

### **THIRD COUNT**

1. Defendants hereby repeat and incorporate by reference its responses to each allegation set forth in the first two counts of Plaintiff's Complaint as though the same were set forth at length herein.

2. Defendants lack sufficient information to admit or deny the allegations contained in Paragraph 2, Third Count of the Complaint, and therefore, deny the same.

3. Defendants deny the allegations in Paragraph 3, Third Count of the Complaint.

4. Defendants deny the allegations in Paragraph 4, Third Count of the Complaint as drafted.

5. Defendants deny the allegations in Paragraph 5. Defendants deny that Plaintiff is entitled to any relief requested in the WHEREFORE clause of the Third Count of Plaintiff's Complaint.

#### **FOURTH COUNT**

1. Defendants repeat and incorporate by reference its responses to each allegation set forth in the first three counts of Plaintiff's Complaint as though the same were set forth at length herein.

2. Defendants deny the allegations contained in Paragraph 2, Fourth Count of the Complaint.

3. Defendants deny the allegations contained in Paragraph 3, Fourth Count of the Complaint.

4. The allegations contained in Paragraph 4, Fourth Count of the Complaint are legal conclusions for which no answer is due. As to any other allegations, those allegations are denied. Defendants deny that Plaintiff is entitled to any relief requested in the WHEREFORE clause of the Fourth Count of Plaintiff's Complaint.

#### **FIFTH COUNT**

1. Defendants repeat and incorporate by reference its responses to each allegation set forth in the first four counts of Plaintiff's Complaint as though the same were set forth at length herein.

2. Defendants deny the allegations contained in Paragraph 2, Fifth Count of the Complaint.

3. The allegations contained in Paragraph 3, Fifth Count of the Complaint are legal conclusions for which no answer is due. As to any other allegations, those allegations are denied.

Defendants deny that Plaintiff is entitled to any relief requested in the WHEREFORE clause of the Fifth Count of Plaintiff's Complaint.

**SIXTH COUNT**

1. Defendants repeat and incorporate by reference its responses to each allegation set forth in the first five counts of Plaintiff's Complaint as though the same were set forth at length herein.

2. Defendants lack sufficient information to admit or deny the allegations in Paragraph 2, Sixth Count of the Complaint, and therefore, deny the same.

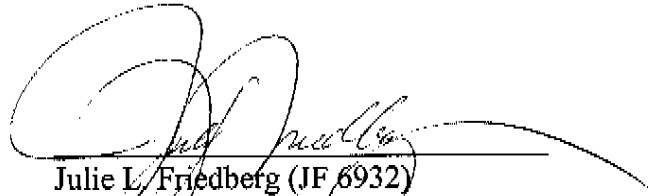
3. Defendants deny the allegations of Paragraph 3, Sixth Count of the Complaint as drafted.

4. Defendants deny the allegations contained in Paragraph 4, Sixth Count of the Complaint, and in as much as these allegations are legal conclusions, no answer is due. Defendants deny that Plaintiff is entitled to any relief requested in the WHEREFORE clause in the Sixth Count of Plaintiff's Complaint.

WHEREFORE, Defendants request that the Complaint be dismissed with prejudice and that all costs be assessed against the Plaintiff.

Date: May 7, 2003

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Julie L. Friedberg", is written over a horizontal line.

Julie L. Friedberg (JF 6932)  
Thelen Reid & Priest LLP  
65 Madison Ave. Suite 100  
Morristown, NJ 07960  
Counsel for PEPCO Technologies, L.L.C., Bradley  
Johnson, and Mark Baird



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ASCO POWER TECHNOLOGIES, L.P.

Plaintiff,

vs.

PEPCO TECHNOLOGIES, L.L.C., BRADLEY  
JOHNSON, MARK BAIRD, ET AL.,

Defendant.

MAY 07 2003

AT 8:30 \_\_\_\_\_ M

WILLIAM T. WALSH

**CERTIFICATE OF SERVICE**

03cv1942 (LHW)

**Julie L. Friedberg**, being of full age, hereby certifies:

1. I am associated with the firm of Thelen Reid & Priest LLP, 65 Madison Avenue, Morristown, New Jersey 07960, attorney for Pepco Technologies, L.L.C., Bradley Johnson and Mark Baird.

2. On this 7<sup>th</sup> day of May, 2003, I caused to be served, via first-class U.S. mail, a copy of the Answer of Defendants Pepco Technologies, L.L.C., Bradley Johnson and Mark Baird upon the following:

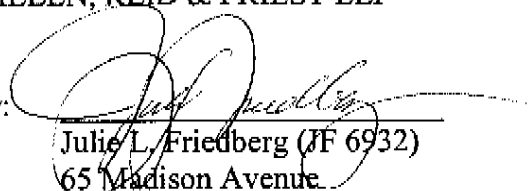
Joseph Di Rienzo  
Dirienzo & Dirienzo  
116 St. Paul Street  
Westfield, NJ 07090

3. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: May 7, 2003

THELEN, REID & PRIEST LLP

By:

  
Julie L. Friedberg (JF 6932)  
65 Madison Avenue  
Morristown, NJ 07960  
(973) 644-3400

*Attorney for Defendants  
Pepco Technologies, L.L.C.,  
Bradley Johnson and Mark Baird*